

FILING LIENS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill modifies a provision related to filing a lien.

Highlighted Provisions:

This bill:

- ▶ provides that mechanics' liens be filed within 90 days after the date of final completion of the original contract; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-7, as last amended by Chapter 64, Laws of Utah 2005

38-11-107, as last amended by Chapter 42, Laws of Utah 2004

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **38-1-7** is amended to read:

38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.

(1) (a) Except as modified in Section 38-1-27, a person claiming benefits under this



28 chapter shall file for record with the county recorder of the county in which the property, or
29 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
30 ~~[from]~~ after the date of final completion of the original contract under which the claimant
31 claims a lien under this chapter.

32 (b) For purposes of this Subsection (1), final completion of the original contract means:

33 (i) if as a result of work performed under the original contract a permanent certificate
34 of occupancy is required for such work, the date of issuance of a permanent certificate of
35 occupancy by the local government entity having jurisdiction over the construction project;

36 (ii) if no certificate of occupancy is required by the local government entity having
37 jurisdiction over the construction project, but as a result of the work performed under the
38 original contract an inspection is required for such work, the date of the final inspection for
39 such work by the local government entity having jurisdiction over the construction project; or

40 (iii) if with regard to work performed under the original contract no certificate of
41 occupancy and no final inspection are required by the local government entity having
42 jurisdiction over the construction project, the date on which there remains no substantial work
43 to be completed to finish such work on the original contract.

44 ~~[(b)]~~ (c) Notwithstanding Section 38-1-2, where a subcontractor performs substantial
45 work after the applicable dates established by Subsections (1)~~[(a)]~~(b)(i) and (ii), that
46 subcontractor's subcontract shall be considered an original contract for the sole purpose of
47 determining:

48 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien
49 under this Subsection (1); and

50 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien
51 under this Subsection (1) for that subcontractor's work.

52 ~~[(c)]~~ (d) For purposes of this section, the term "substantial work" does not include:

53 (i) repair work; or

54 (ii) warranty work.

55 ~~[(d)]~~ (e) Notwithstanding Subsection (1)~~[(a)]~~(b)(iii), final completion of the original
56 contract does not occur if work remains to be completed for which the owner is holding
57 payment to ensure completion of that work.

58 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

59 (i) the name of the reputed owner if known or, if not known, the name of the record
60 owner;

61 (ii) the name of the person:

62 (A) by whom the lien claimant was employed; or

63 (B) to whom the lien claimant furnished the equipment or material;

64 (iii) the time when:

65 (A) the first and last labor or service was performed; or

66 (B) the first and last equipment or material was furnished;

67 (iv) a description of the property, sufficient for identification;

68 (v) the name, current address, and current phone number of the lien claimant;

69 (vi) the amount of the lien claim;

70 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

71 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

72 Recording of Documents; and

73 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
74 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
75 a lien claimant to remove the lien in accordance with Section 38-11-107.

76 (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to
77 hold and claim a lien.

78 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or
79 mail by certified mail a copy of the notice of lien to:

80 (i) the reputed owner of the real property; or

81 (ii) the record owner of the real property.

82 (b) If the record owner's current address is not readily available to the lien claimant, the
83 copy of the claim may be mailed to the last-known address of the record owner, using the
84 names and addresses appearing on the last completed real property assessment rolls of the
85 county where the affected property is located.

86 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner
87 precludes the lien claimant from an award of costs and attorneys' fees against the reputed
88 owner or record owner in an action to enforce the lien.

89 (4) The Division of Occupational and Professional Licensing shall make rules

90 governing the form of the statement required under Subsection (2)(a)(ix).

91 Section 2. Section **38-11-107** is amended to read:

92 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**
93 **interest in the residence.**

94 (1) A person qualified to file a lien upon an owner-occupied residence and the real
95 property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics'
96 Liens, who provides qualified services under an agreement effective on or after January 1,
97 1995, other than directly with the owner, shall be barred after January 1, 1995, from
98 maintaining a lien upon that residence and real property or recovering a judgment in any civil
99 action against the owner or the owner-occupied residence to recover monies owed for qualified
100 services provided by that person if:

101 (a) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (4)(b);

102 or

103 (b) (i) a subsequent owner purchases a residence from an owner;

104 (ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i)
105 occupies the residence as a primary or secondary residence within 180 days from the date of
106 transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or
107 secondary residence within 180 days from the date of transfer; and

108 (iii) the owner from whom the subsequent owner purchased the residence met the
109 conditions described in Subsections 38-11-204(4)(a) and (4)(b).

110 (2) If a residence is constructed under conditions that do not meet all of the provisions
111 of Subsection (1), that residence and the real property associated with that residence as
112 ~~defined~~ provided in Section 38-1-4, shall be subject to any mechanics' lien as provided in
113 Section 38-1-3.

114 (3) A lien claimant who files a mechanics' lien or foreclosure action upon an
115 owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and
116 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure
117 action if the lien claimant removes the lien within 15 days from the date the owner obtains a
118 certificate of compliance and mails a copy of the certificate of compliance by certified mail to
119 the lien claimant at the address provided for by Subsection 38-1-7(2)~~(e)~~(a)(v). The 15-day
120 period begins accruing from the date postmarked on the certificate of compliance sent to the

121 lien claimant.

Legislative Review Note
as of 11-9-05 3:36 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-19-05 9:40 AM

The Business and Labor Interim Committee recommended this bill.